

**AGREEMENT FOR THE OPERATION AND MAINTENANCE**

**OF**

**THE OUTDOOR SPORTS CENTER**

**Between**

**THE CITY OF MORGAN HILL**

**And**

**MHOSC, LLC**

**Dated:** July 2, 2019

**AGREEMENT FOR THE OPERATION AND MAINTENANCE OF THE  
OUTDOOR SPORTS CENTER**

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**AGREEMENT FOR THE OPERATION AND MAINTENANCE  
OF  
THE OUTDOOR SPORTS CENTER**

**Between**

**THE CITY OF MORGAN HILL**

**And**

**MHOSC, LLC**

This agreement is made and entered into on this day of July 2, 2019, by and between the CITY OF MORGAN HILL, a municipal corporation ("CITY"), and MHOSC, LLC ("OPERATOR"), a California LLC and non-profit 501(c)(3) corporation. Collectively CITY and OPERATOR may be referred to as "PARTIES."

**Recitals**

The following recitals are a substantive portion of this Agreement:

1. The CITY issued a Request for Proposals ("RFP") for the operation and maintenance of the fields and related IMPROVEMENTS known as the Outdoor Sports Center ("OSC") and related PREMISES in September of 2017.
2. MHOSC, LLC submitted a Response to Request for Proposals through its' predecessor, NewCo, LLC in February 2018.
2. The Parks and Recreation Commission reviewed the responses to the RFP and recommended OPERATOR be chosen by the City Council.
3. The City Council determined that MHOSC, LLC was responsive to the RFP and was the best responsible proposer, and selected said proposer to operate the OSC in accordance with the terms and conditions of this Operations and Maintenance Agreement ("AGREEMENT").
4. MHOSC, LLC is a newly formed 501(c)(3) LLC created for the purpose of operating the OSC. MHOSC, LLC consists of three non-profit 501(c)(3) organizations which include: San Jose Soccer Complex Foundation ("SJSCF"), Orchard Valley Youth Soccer League ("OVYSL") and California Youth Soccer Association ("CYSA").
4. OPERATOR desires to enter into an agreement in accordance with the foregoing and undertakes to provide services of the type and character required by CITY for the benefit of the residents of the CITY and other users at the OSC.



5. The principal motivation for CITY to enter into this AGREEMENT is to serve the public by providing a well-maintained and operated sports field and related facilities and services.

6. CITY and OPERATOR intend to work together in good faith to ensure that the OSC is upgraded to become a first-class sports facility which is operated in a professional manner.

NOW THEREFORE, in consideration of the premises and of the terms, covenants, and conditions to be kept and performed by the PARTIES, the PARTIES agree as follows:

## **SECTION 1. DEFINITIONS**

For the purpose of this AGREEMENT, the following capitalized words and phrases not defined elsewhere in this AGREEMENT are defined and shall be construed as set forth:

**AGREEMENT:** This "AGREEMENT FOR THE OPERATION AND MAINTENANCE OF THE OUTDOOR SPORTS CENTER" and Exhibits (A-M) attached hereto and incorporated herein.

**BUSINESS MANAGER:** OPERATOR'S representative appointed by OPERATOR to be the primary point of contact for City with respect to operations at the Facility. OPERATOR will notify CITY promptly upon any change of the appointed BUSINESS MANAGER.

**CODE:** Morgan Hill Municipal Code.

**DIRECTOR:** The City representative appointed by the City Manager to oversee the OSC. The City initially appoints the Public Services Director or his or her designee.

**FACILITY:** The entire set of fields, fixtures, and equipment found at the OSC including but not limited to soccer fields, restrooms, concession area, parking, irrigation, and locker rooms, including, but not limited to IMPROVEMENTS, as defined below.

**FISCAL YEAR:** The period from July 1 of one calendar year to June 30 of the next calendar year.

**IMPROVEMENTS:** All buildings and appurtenances recessed into or attached by any method to the ground or to another object which is recessed or attached to the ground or to other CITY owned facilities (such as buildings, turf, fences, posts, signs, electrical hook-ups, irrigation systems, plumbing, tracks, tanks, etc.).

**PREMISES:** The geographical area, as defined in Exhibit A, attached hereto and incorporated herein which is the subject of this AGREEMENT and in which the OSC may be operated.

## **SECTION 2. PERMISSION GRANTED**

A. Permission for Entry: For and in consideration of the receipt of a portion of profits as described and subject to all of the terms and conditions of this AGREEMENT, CITY hereby grants to the OPERATOR the exclusive right and obligation to: schedule the use of the OSC ; and to operate and maintain the OSC for the purpose of hosting, organizing, or scheduling the OSC for sporting

events along with uses ancillary to the sporting events appropriate for the FACILITY, including, but not limited to football, soccer, lacrosse, field hockey, rugby, and cheerleading; and not for any other purpose without the prior written consent of DIRECTOR. OPERATOR may also schedule the use of the OSC for non-sporting events as described herein. The rights granted by this AGREEMENT shall be carried on solely within the limits and confines of the areas designated as PREMISES.

B. CITY'S Rights: CITY reserves the right to further develop or improve the PREMISES for the benefit of the OSC operation and enhancement of the sports related function at the facility, in its sole discretion, without interference or hindrance. CITY shall, however, consider the desires and views of OPERATOR. No other activity, service, or amenity shall be provided by OPERATOR unless related to the FACILITY and without the express written approval of DIRECTOR.

### SECTION 3. PREMISES

A. The PREMISES (Exhibit "A") subject to this AGREEMENT is located at 16500 Condit Road, Morgan Hill, CA.

Overflow Lot 1 (Dirt lot off Condit Road)

Overflow Lot 2/New Corporation Yard Area (Undeveloped Property off Murphy Avenue as outlined in Exhibit "A"(includes one house).

B. The FACILITY:

The FACILITY includes, but is not limited to: artificial turf sports fields, natural grass sports fields, parking, landscaping, irrigation, water well, maintenance area, buildings including restrooms, concession area and storage, driveways, unimproved field/parking area, house and garage, and various fences and gates.

C. No Violation of Law: OPERATOR shall not use or allow the OSC or the PREMISES to be used, in whole or in part, for any use in violation of any present or future laws, ordinances, rules, and regulations of any public or governmental authority or agencies, departments or officers thereof, including CITY. These ordinances, rules, and regulations include, but are not limited to those which relate to sanitation, public health, and safety.

D. CITY Resolution: At any time during the term of this AGREEMENT, CITY may, by resolution of the City Council, require the OPERATOR to surrender any portion of the PREMISES. If CITY imposes this requirement on OPERATOR, CITY shall attempt to provide OPERATOR with equivalent, in terms of net area, substitute space. The PARTIES shall negotiate in good faith to prepare an amendment to this AGREEMENT if the reduction in space results in less net revenue to the OPERATOR. The minimum size of the OSC, based upon net usable area shall not be reduced below the level shown on Exhibit "D" which is attached hereto and incorporated herein by this reference. If CITY reduces the net usable area of the OSC below the amount shown on Exhibit "D", OPERATOR may terminate this Agreement, pursuant to the terms of Section 19(F)(4). Notwithstanding this paragraph, CITY may widen Murphy Avenue based upon the



approximate dimensions shown in Exhibit "M", attached hereto and incorporated herein, including all street frontage improvements, without compensation to OPERATOR or change to this AGREEMENT.

#### **SECTION 4. TERM OF AGREEMENT**

A. Term: The term of the AGREEMENT shall be ten (10) years from July 8, 2019 subject, to early termination as set forth below. The AGREEMENT shall commence when formally executed by CITY.

B. Term Extension: The term may be extended on the same terms and conditions by up to two (2) additional five (5) year terms at the discretion of the CITY. The CITY shall not unreasonably withhold approval of either extension if OPERATOR has not breached AGREEMENT. OPERATOR shall provide eighteen (18) months' notice prior to any extension period should it wish to utilize the additional five (5) year terms. CITY shall notify OPERATOR of CITY'S approval or disapproval of the extension within ninety (90) days of OPERATOR'S notice, unless this time is extended based upon mutual agreement of the PARTIES.

C. Transition Period. The parties will meet and confer on a Transition Plan in good faith within 60 days after the execution of the Agreement.

D. Termination: The CITY may terminate this AGREEMENT upon an event of default as set forth herein.

E. Termination Provision: The CITY may terminate this AGREEMENT pursuant to Section 19.A.

#### **SECTION 5. OPERATOR PAYMENT AND RESERVE FUND**

A. OPERATOR Payment: Operator must make payments to CITY semiannually, no later than 60 days after the end of each six month period. OPERATOR shall pay CITY 75% of net profits ("PROFIT PAYMENT") from all income generated at the PREMISES. Net profits shall be determined by subtracting all reasonable, actual and necessary expenses incurred and paid for the management and operation of the OSC from the GROSS RECEIPTS generated, as described below.

Reasonable Expenses ("REASONABLE EXPENSES") are defined as follows:

1. For expenses to be considered paid for the management and operation of the OSC those expenses must have a direct nexus to operations and maintenance of the PREMISES or be directly related to the direct administration of operations and maintenance. Marketing and promotion of the OSC shall all be considered REASONABLE EXPENSES. OPERATOR shall use commercially reasonable procedures to ensure that losses due to any losses resulting from bad checks received from the consumers or dishonored payment to OPERATOR by customer or purchaser are minimized.

Capital acquisition of equipment or property over \$10,000 shall not be a REASONABLE EXPENSE unless approved in writing by the DIRECTOR prior to purchase. The standard DIRECTOR shall utilize in approving or disapproving the expense is whether the capital acquisition of equipment or property is an expense that is reasonably necessary for the operation of the FACILITY. Capital assets approved as a REASONABLE EXPENSE shall become the property of the City at the conclusion of the AGREEMENT.

The infrastructure investment outlined in section 10 shall not be included in REASONABLE EXPENSES.

Loan repayment shall not be considered as a REASONABLE EXPENSE unless approved in advance by the DIRECTOR.

B. GROSS RECEIPTS Defined: For the purposes of this section and this AGREEMENT, the term "GROSS RECEIPTS" shall mean the total amount of money OPERATOR received for the use of the PREMISES or OSC; the total amount of money OPERATOR received for sale of any goods, services (whether or not these services are performed as a part of or in connection with the sale of goods), and the total amount of money OPERATOR received for advertising in connection with the OSC and this AGREEMENT.

"GROSS RECEIPTS" shall not include:

1. Any sales taxes, use taxes, or excise taxes required by law to be included in or added to the purchase price and collected from the consumer or purchaser and paid by OPERATOR.
2. California Redemption Value (CRV).
3. Refunds from, or the value of, merchandise, supplies, or equipment returned to shippers, suppliers, or manufacturers;
4. Receipts from the sale (at cost) of uniforms, clothing, or supplies to OPERATOR'S employees where such uniforms, clothing, or supplies are required to be worn or used by its employees.
5. Receipts from any sale in which the subject of such sale, or some part thereof, is thereafter returned by the purchaser to and accepted by OPERATOR, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit.
6. The amount of any cash or quantity discounts received from sellers, suppliers, or manufacturers.

OPERATOR shall not reduce or increase the amount of GROSS RECEIPTS, as herein defined, as a result of any of the following:

1. Any discount or reduced-price programs (such as the "Home Field Program") so that the full price that would have been charged absent any discount or reduced-price program shall constitute the amount of GROSS RECEIPTS. This provision shall only apply when a discount is not provided to all groups in a particular category. (For example, if a regularly established rate is \$100, but the customer only pays \$75 through a discount or reduced-price program, the \$100 market rate will be used to calculate gross revenue.). The CITY'S

free usage is not a discount or reduced-price program and shall not be counted as GROSS RECEIPTS. Any error in cash handling by OPERATOR or OPERATOR'S employees or agents.

2. Any losses resulting from bad checks received from the consumers or dishonored payment to OPERATOR by customer or purchaser.
3. Any arrangement for a rebate, kickback, or hidden credit given or allowed to a customer.
4. Any arrangement where a partner 501(c)(3) or related party receives a reduced rate for usage of the OSC or PREMISES.

#### C. Biannual Reports:

1. OPERATOR shall transmit a Statement of Revenue and Expense in the form of a Profit and Loss Statement (Exhibit "I"), for every six month period during the Term. Along with the Statement of Revenue and Expense, OPERATOR must pay the PROFIT PAYMENT to the CITY
2. OPERATOR shall maintain and submit to the CITY monthly statistical information and reports semiannually (July-December and January-June) on the following: ongoing programs, hours of field reservations, participant levels, use by sports type, local vs. regional use levels, hours of use, GROSS RECEIPTS and net profits, expenses and revenues. OPERATOR shall provide statistics for all hosted major events, including estimated attendance, estimated percentage of overnight stays, average travel distance to reach the facility. MAJOR EVENTS are defined as those events where it is anticipated that there will be more than 500 attendees. At the request of CITY, OPERATOR shall provide an hour by hour booking schedule for the use of the FACILITY.

D. Reserve Fund: CITY shall establish a Reserve Fund into which it will place the PROFIT PAYMENTS from OPERATOR.

1. City shall have sole discretion over the use of the Reserve Fund. The intent of the Reserve Fund is to pay for future replacement of fields and equipment at the FACILITY. The Reserve Funds shall be spent on those items on Exhibit "L". CITY may only use the Reserve Fund for the benefit of the OSC.
2. CITY and OPERATOR shall in good faith agree to a Reserve Plan that funds the replacement of FACILITY components. It is the intention of the PARTIES that the Reserve Fund and the Reserve Plan provide the funding needed to replace or upgrade the FACILITY components as needed to maintain the FACILITY to the standard provided in Section 9, C. However, either PARTY may, but is not required to, provide additional funds from any available source.
3. OPERATOR may request that CITY utilize funds from the Reserve Fund to pay for items listed in the Reserve Plan and may request amendments to the Reserve Plan at any time. CITY will make a good faith effort to comply with these requests from OPERATOR.



## SECTION 6. LATE PAYMENT

A. Late Payment: The failure of OPERATOR to pay any of the PROFIT PAYMENTS or other payments required by this AGREEMENT on or before the payment due date is a breach of the AGREEMENT. The CITY may terminate the AGREEMENT and take other legal action for such a breach as set forth herein.

B. Late Fees: Without waiving any rights available at law, in equity, or under the AGREEMENT, in the event of late or delinquent payments, OPERATOR recognizes that CITY will incur certain expenses as a result thereof, the amount of which is difficult to ascertain. Therefore, in addition to monies owing, OPERATOR agrees to pay the CITY a late fee set forth below to compensate CITY for all expenses and or damages and loss resulting from the late or delinquent payments.

1. The charge for each late payment shall be \$200.00, for each month after the due date. In addition, OPERATOR shall pay interest calculated at the rate of eighteen percent (18%) per annum or one and one-half percent (1.5%) for each month, after the due date, assessed daily, on the balance of the unpaid amount, unless otherwise prohibited by law. Payments are past due if postmarked or electronically transferred after the fifth (5th) day on which payment was due.

## SECTION 7. OSC USAGE, FEES AND CHARGES

A. Usage: Subject to the conditions set forth below, CITY agrees that OPERATOR, upon payment of the PROFIT PAYMENTS, and all other charges and payments due from OPERATOR under the terms of this AGREEMENT, and upon observing and keeping the required terms, conditions and covenants of this AGREEMENT, and provided that OPERATOR is not in breach or default of this AGREEMENT, shall lawfully and quietly hold, use, and enjoy the FACILITY during the term of and for purposes specified in this AGREEMENT. In the case of disputes, during the term of the AGREEMENT, about any conditions which may impede the OPERATOR'S quiet enjoyment of the FACILITY, the DIRECTOR and OPERATOR shall meet and confer to determine the solution to the dispute.

B. Usage Fees: OPERATOR has the right to determine field usage fees and other charges with the following limitations:

1. Fees for field usage for existing local users shall not increase by more than 5% from existing rate established by the previous operator within the first year of the AGREEMENT. Existing rates or charges are shown in Exhibit "B" attached hereto and incorporated herein by this reference. Fee increases in subsequent years shall not exceed the CPI increase of the prior year for the San Francisco/Oakland/San Jose CPI for Urban Consumers.

2. If OPERATOR combines parking charges and field usage fees, the annual change in fees may exceed 5%, subject to prior written approval by the DIRECTOR.

3. Fees for the July 4<sup>th</sup> Independence Day event shall not increase more than 5% annually.

4. There are no rate caps or increase caps on regional uses such as tournaments.
5. All fees shall not be excessively high, low, unreasonable, or discriminatory based upon the circumstances.
6. The OPERATOR may utilize alternate fee schedules such as a team participation fee instead of fee rental for special events subject to written permission from the DIRECTOR.
7. Notwithstanding the above limitations, DIRECTOR may, in DIRECTOR'S sole discretion approve additional changes in usage and other charges.

C. Charges and Pricing: OPERATOR shall have the right to charge and establish prices for the parking, entrance, advertising, and any other usage of the PREMISES permitted under this AGREEMENT. OPERATOR shall provide the DIRECTOR with a list of prices for all services and goods offered. OPERATOR shall update the list and provide a copy to the DIRECTOR whenever any prices are changed.

D. Scheduling: OPERATOR shall establish and implement a field reservation system and shall schedule OSC field usage for community use and other regional uses.

E. Local Entities: OPERATOR is required to schedule field use by local entities of at least 50% of the time, measured over a FISCAL YEAR. Local entities are defined as (1) entities having at least 50% of its participants with a City of Morgan Hill address; or (2) are entities on the Current Organization List, which is attached hereto and incorporated herein as Exhibit "C". OPERATOR shall have the right to update Exhibit "C" annually, subject to DIRECTOR'S approval.

1. Alternatively, if local entity use falls below 50% and no local entity requests for weekday usage are denied, the local usage required under this subsection E will be deemed met.

2. Maximization of Use. OPERATOR shall make available the turf fields and grass fields in a manner that maximizes use of the OSC, while maintaining the OSC at the maintenance standards specified in this AGREEMENT. Nothing in this AGREEMENT shall require OPERATOR to make the FACILITY available on a fee basis below those charges specified in Exhibit "B" in order to maximize use..

3. Existing events shall receive booking priority by OPERATOR.

F. Non-Soccer Usage: OPERATOR is required to ensure that at least 10% of field use time is for non-soccer uses. For any FISCAL YEAR in which non-soccer usage is below 8% OPERATOR shall pay to the CITY a \$5,000.00 penalty payment for each percent below 8%. This penalty shall be due within 30 days from the end of the FISCAL YEAR.

1. If non-soccer use is less than 8%, but no significant non-soccer organization requests are denied then no penalty payment is due. A significant non-soccer organization shall be defined as an

organization that requests to book one or more fields for ten or more separate calendar days, within a calendar year.

G. City Use: CITY shall have the right to one hundred (100) hours of scheduled field use on the OSC at no charge to the CITY. CITY may use this free time for CITY sponsored or CITY partner programs. Each field's use shall be counted individually, and the total free time shall not exceed 100 hours during a calendar year. The CITY'S use shall not exceed one weekend day per year. OPERATOR shall use reasonable efforts to schedule the CITY'S request. If the CITY uses the OSC for hours over the free 100 hours, CITY shall pay the current non-profit rate to OPERATOR.

H. Parking Use: The improved and overflow parking lots are part of the PREMISES under this AGREEMENT. However, CITY shall have the right to utilize fifty percent (50%) of the overflow parking lots, which is unpaved and contains approximately 310 spaces during the Aquatics Center's ("AC") summer recreation swim season and during days when regional swim meets, or other large events are held at the AC. The City shall provide sufficient notice to OPERATOR when the overflow parking lot is needed. OPERATOR and the City shall provide each other with monthly calendars to ensure clear communication of when events are occurring at the OSC and AC. During shared use, a parking fee can only be charged for the portion of the lot for OSC customers, unless prior written approval is provided by the City. AC customers will be required to enter from the south gate and OSC customers will be required to enter from the paved parking lot gate. In the event that the City requires the use of both the improved parking lot and overflow parking lot for large community events and events at the AC, the City and OPERATOR will work in a good faith effort to accommodate the CITY'S request unless the parking is already needed for events occurring at the OSC. When the City utilizes any parking lot, parking fees shall not be allowed unless the PARTIES mutually agree. OPERATOR shall work in good faith with CITY to develop event parking plans to manage the OSC and AC parking in an integrated fashion. OPERATOR shall be responsible for updating parking plans for each weekend. CITY shall be responsible for management and clean-up of the Parking Lots during and at the conclusion of CITY'S use.

1. OPERATOR shall allow City to use its Parking Lots during times in which its use is not needed by OPERATOR. CITY shall be responsible for management and clean-up of the Parking Lots during and at the conclusion of CITY'S use.

2. OPERATOR shall utilize and manage Overflow Lot 1 and Overflow Lot 2. CITY shall have the right to utilize 50% of these parking areas if CITY requests usage no less than 30 days in advance. CITY shall be responsible for the management and clean-up of the Parking Lots during and at the conclusion of CITY'S use.

3. OPERATOR shall have the ability to use the San Pedro Avenue Parking area by request through a "no fee" special event permit, submitted no less than 60 days in advance of the need for parking. Exhibit "E" attached hereto and incorporated herein depicts the San Pedro Avenue Parking area.



OPERATOR shall be responsible for management and clean-up of the San Pedro Avenue Parking Area during and at the conclusion of OPERATOR'S use.

4. OPERATOR shall have the ability to use the Aquatic Center Parking when not in use by CITY by request through a "no fee" special event permit, submitted no less than 60 days in advance of the need for parking. OPERATOR shall be responsible for management and clean-up of the Aquatic Center Parking during and at the conclusion of OPERATOR'S use.

5. Any other closure of CITY streets for the use of OPERATOR'S patrons will require a special event permit at the usual fee. OPERATOR must apply for a special event permit no less than 60 days prior to the special event. OPERATOR shall be responsible for management and clean-up of any special use of CITY parking during and at the conclusion of OPERATOR'S use.

6. OPERATOR shall maintain the improved paved parking lot to the standard of a parking lot used for CITY'S recreation facilities. The overflow parking lot and any unpaved parking lots shall be maintained in a safe and appropriate condition for an unpaved public parking lot. OPERATOR shall grade or eliminate all significant ruts, holes, or hills as soon as practicable.

7. For events where OPERATOR charges fees for parking, OPERATOR shall provide parking management/control on adjacent City owned parking lots where fees are not charged to ensure parking at City facilities is not impacted.

I. Advertising: OPERATOR shall have the right to pursue advertising and sponsorship agreements and offer space and locations at the OSC for advertising that are consistent with the CITY'S approved policy. OPERATOR may have temporary advertising for alcohol products during "ADULT ONLY" tournaments occurring at the OSC, upon prior written pre-approval by DIRECTOR. ADULT ONLY tournaments are those tournaments or events where the participants are primarily adults. Revenues derived from this advertising and sponsorship agreements are GROSS RECEIPTS. All advertising and sponsorship agreements shall not extend beyond the term of this AGREEMENT. All online sponsorship or advertising income must be included in GROSS RECEIPTS.

J. Naming Rights: OPERATOR shall have the right to pursue and have the authority to enter into agreements for advertising naming rights for the fields, scoreboards, and other OSC amenities, provided that the term of any such agreement shall not continue beyond the term of this AGREEMENT. OPERATOR may also pursue naming rights agreements for the entire OSC; subject to approval by the City Council by resolution. CITY and OPERATOR shall share 50%/50% in all revenue from naming rights. CITY'S share of the revenue from naming rights will be placed in the Reserve Fund. OPERATOR and the CITY shall work together in good faith to negotiate the terms of any naming agreement with a third party.

K. Food and Beverage Concession Stand: OPERATOR shall have the right to establish or permit food and beverage sales at the concession stand or other areas on the PREMISES; provided that OPERATOR shall not sell any alcohol or tobacco products without prior written consent from

DIRECTOR. Revenues derived from all sales from the PREMISES shall be part of GROSS RECEIPTS. All food and beverage sales shall comply with local, state, and federal laws and regulations, including, but not limited to all County Health Department regulations or requirements. No products containing marijuana or marijuana extracts shall be sold at the OSC or on the PREMISES.

L. Vending Machines: OPERATOR shall not install, or allow to be installed, any vending machines, electronic games, or other coin-operated machines without prior written approval of DIRECTOR. DIRECTOR shall have the right to order the immediate removal of any unauthorized machines. DIRECTOR shall not unreasonably withhold permission for the installation of vending machines.

M. Non-Sporting Events: OPERATOR shall not schedule any non-sporting events without the prior written permission of DIRECTOR. DIRECTOR shall not unreasonably withhold permission for events to be hosted.

N. Event Schedule: OPERATOR shall maintain an online schedule of events that is available to the CITY and the public. The schedule will show all MAJOR EVENTS.

L. Signage. OPERATOR may design and construct a permanent sign on the PREMISES to advertise the location of the OSC, subject to the approval of DIRECTOR. OPERATOR may design and install temporary signage concerning events at the OSC if the signage is professional in appearance and permitted under local and state laws.

## **SECTION 8. OPERATOR RESPONSIBILITIES**

OPERATOR shall, at all times during the term of the AGREEMENT, comply with the following conditions:

A. Conduct: OPERATOR shall at all times conduct its business in a professional, and orderly manner to the reasonable satisfaction of DIRECTOR. OPERATOR shall use its best efforts to permit no intoxicated person(s), profane or indecent language, or boisterous or loud conduct in or about the PREMISES and shall not knowingly allow the use or possession of illegal drugs, narcotics, or controlled substances on the PREMISES. OPERATOR shall make all reasonable efforts to ensure that all activities at the PREMISES do not constitute a public nuisance due to spillover effects upon adjacent properties or public safety response requirements.

B. Non-Discrimination: OPERATOR, in its operations at the FACILITY, for itself, its personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree that: (1) no person shall be excluded from the PREMISES or OSC or activities thereon or be denied the benefits of or subjected to discrimination on the grounds of race, color, national origin, religion, ancestry, sex, age, physical disability, or sexual orientation; (2) in the construction of any improvements on, over or under the PREMISES authorized to be improved herein and the furnishing of services thereon, no person shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination on the basis of race, color,

national origin, religion, ancestry, sex, age, physical disability, or sexual orientation. In addition, OPERATOR, during the term of the AGREEMENT, agrees not to unjustly discriminate in its employment practices against any employee or applicant for employment because of the employee's or applicant's race, color, religion, national origin, ancestry, sex, age, physical disability, or sexual orientation. All subcontracts entered into by OPERATOR shall contain a similar provision.

C. Qualified Personnel: OPERATOR will, in the operation of the OSC, employ or permit the employment of only personnel who will provide a high standard of service to the public and cooperation with CITY. All personnel, while on or about the PREMISES, shall be neat in appearance and courteous at all times and shall be appropriately attired, with badges or other suitable means of identification. OPERATOR shall make all reasonable efforts to ensure no person employed by OPERATOR, while on or about the PREMISES, shall be under the influence of illegal drugs, narcotics, other controlled substances or alcohol, or use inappropriate language, or engage in otherwise inappropriate conduct for a work environment. In the event an employee's conduct is not satisfactory, the DIRECTOR may direct OPERATOR to remove that person from the PREMISES and OPERATOR shall do so.

D. Employees of Operator: OPERATOR shall appoint a Business Manager, upon commencement of operation of the FACILITY for the management and operation of the FACILITY. If OPERATOR elects to subcontract the management of any of the portions of the operations to a managing entity or entities, the provisions of this section shall also apply to that entity. The person retained as Business Manager must be a qualified and experienced sports field manager or supervisor or sports field management, vested with full power and authority to accept service of all notices provided for herein. The Business Manager will be responsible for the appearance, conduct, and demeanor of OPERATOR'S agents, contractors, and employees. The Business Manager shall be available during regular business hours and, at all times during that person's absence, a responsible delegate or designee shall be in charge and available. The Business Manager shall have the authority to: hire, fire, and schedule personnel; order repairs, maintenance work, merchandise and materials; oversee inventory control and tracking; oversee field maintenance; implement a marketing plan; maintain accounting records; book parties and events; oversee operations; train employees (to include such areas as customer service) and have ultimate on-site decision-making responsibility.

E. Business Manager: The Business Manager shall be the single point of contact for the DIRECTOR. The Business Manager shall be available at all normal business hours and any hours in which the FACILITY is in use to be contacted by the DIRECTOR or his or her designee should that be necessary. If the Business Manager is unavailable, then an alternative employee shall be available for contact by the DIRECTOR. If, for reasons of ill health, incapacitation, or death, the Business Manager becomes incapable of performing all terms and provisions of the AGREEMENT and no substitute is immediately forthcoming from OPERATOR, DIRECTOR may, following seven days written notice in his or her sole discretion, terminate the AGREEMENT and all terms and conditions contained therein s

F. Marketing and Promotion: OPERATOR shall use its best efforts to market and promote the usage of the OSC and PREMISES for purposes permitted under this AGREEMENT. No later than



thirty (30) days after the first day of each FISCAL YEAR, OPERATOR shall provide the CITY with an annual marketing plan, which plan shall include goals to support local economic development activities. The CITY reserves the right to concurrently market and promote the use of the OSC.

G. Utilities: OPERATOR shall be responsible for all utility charges. Charges may include, but are not limited to, deposits, installation costs, meter deposits, and all service charges for gas, electricity, water, heat, air-conditioning, and other utility services to PREMISES, and shall be paid in a timely fashion by OPERATOR regardless of whether utility services are furnished by CITY or by other utility service providers.

1. CITY will incur the cost of all refuse collection from the main dumpster during the term of this AGREEMENT. Notwithstanding the foregoing, OPERATOR agrees to pay the cost of refuse collection for the PREMISES if the CITY'S agreement with its current refuse hauler terminates.

2. OPERATOR hereby expressly waives all claims for compensation against CITY, for any loss or damage sustained by OPERATOR resulting from any defect, deficiency, or impairment of the water, heating, or air conditioning systems, electrical apparatus, or wires furnished to the PREMISES from any cause, or from any loss resulting from water, earthquake, wind, civil commotion, or riot. OPERATOR hereby expressly releases and discharges CITY and its officers, employees, and agents from any and all demands, claims, actions, and causes of action arising from any of these causes. In addition to the foregoing waivers, any damage to any utility service line if caused by OPERATOR, its employees, contractors, sub-contractors, suppliers, agents, or invitees, OPERATOR shall be responsible for the cost of repairs and all damages incurred.

H. Safety: OPERATOR shall correct safety deficiencies and violations of safety practices as soon as reasonably possible after the condition becomes known or DIRECTOR notifies OPERATOR of the condition, if OPERATOR is unaware of the condition. OPERATOR shall cooperate fully with CITY in the investigation of accidents occurring on the PREMISES. In the event of injury to a patron or customer requiring emergency medical response, OPERATOR shall reasonably ensure that the injured person receives prompt and qualified medical attention. Notice to CITY within 48 hours or sooner if practicable shall be provided. Email is acceptable form of Notice under this provision. OPERATOR shall notify the CITY in writing describing the names of the person(s) injured, and the time, place, and nature of the injury. If OPERATOR fails to correct hazardous conditions specified by the DIRECTOR in a written notice, which have led, or in the opinion of CITY could lead, to injury, the DIRECTOR may, in addition to all other remedies which may be available to CITY, repair, replace, rebuild, redecorate, or paint the PREMISES to correct the specified hazardous conditions, with the cost thereof, plus fifteen percent (15%) for administrative overhead, to be paid by OPERATOR to CITY on demand. OPERATOR is solely responsible for safety at the FACILITY.

I. Security: OPERATOR shall be responsible for the security of the PREMISES. OPERATOR may install equipment approved by the CITY, which will assist in protecting the PREMISES from theft, burglary, or vandalism. Any security equipment must be purchased, installed, and maintained by OPERATOR. OPERATOR is solely responsible for the security of the FACILITY

except for live security provided by the CITY during events which are solely run by the CITY or the CITY and its partner(s).

J. Environmental Sensitivity: The OPERATOR must operate the OSC in an environmentally sensitive manner and all operations must comply with CITY policies and ordinances regarding protection of the environment. OPERATOR shall not use or allow the use on the PREMISES of environmentally unsafe products. OPERATOR shall develop and submit a water conservation plan to the DIRECTOR.

K. Fund-Raising Activities: OPERATOR shall cooperate with CITY personnel on all matters relative to the conduct of fund-raising and/or special events.

L. Community Outreach: OPERATOR shall coordinate and cooperate with CITY to develop strategies to contact all members of the community, particularly those living in low-to-moderate income areas, fixed-income households, youth, the disabled, etc., to provide its services to these members of the community who may not otherwise have the opportunity to utilize the opportunities provided by OPERATOR.

## **SECTION 9. MAINTENANCE AND REPAIR**

A. "As Is": OPERATOR acknowledges that it is taking control of the PREMISES in an "as is" condition.

B. Maintenance and Operating Standards: During all periods that the PREMISES are used or are under the control of the OPERATOR for the uses, purposes, and occupancy set forth in this AGREEMENT, OPERATOR shall maintain and operate the PREMISES and the OSC at its own expense, in compliance with law and, unless otherwise more specifically set forth, to a standard equal or better than standards in place as of the effective date of the AGREEMENT.

C. Maintenance Standards: The intent of this AGREEMENT is that within a two (2) year period, the OPERATOR will bring the maintenance standards of the PREMISES up to the level consistent with the Gilroy Soccer Park or the Fremont Central Park Sports Complex. CITY will provide OPERATOR with detailed specifications for artificial turf maintenance.

D. General Maintenance and Repair: OPERATOR shall be responsible for all necessary janitorial duties and damage and maintenance repairs, to the reasonable satisfaction of DIRECTOR

E. Fields: OPERATOR shall, at its own expense, keep and maintain the turf field and the grass field to a high standard required for adult amateur soccer league play. OPERATOR shall maintain and operate all IMPROVEMENTS, fixtures, irrigation system, and utility systems which may now or hereafter exist on said fields, whether installed by CITY or OPERATOR.

F. Improvements: OPERATOR shall, at its own expense, keep and maintain IMPROVEMENTS. OPERATOR'S maintenance duties shall include all sweeping, washing, servicing, repairing, replacing, cleaning, and interior and exterior painting that may be required to properly maintain

the premises in a safe, clean, operable, and attractive condition. OPERATOR shall perform all repairs, replacements, rebuilding, and restoration as may be required by DIRECTOR'S prior written request. Those duties shall also include maintenance of the electrical, mechanical, and plumbing systems in the interior of the PREMISES, including, but not limited to, light fixtures, toilets, and faucets. Director's request shall be reasonable.

G. Pest Control: OPERATOR shall be responsible for pest control in and around the PREMISES, including but not limited to, abatement of insects, roaches, ants, spiders, rodents, vermin, and other nuisance pests.

H. Correction of Conditions Leading to Damage: If OPERATOR fails, after written notice, to correct any conditions which have led or, in the opinion of CITY, could lead to significant waste or damage to CITY property, DIRECTOR may at his or her option, and in addition to all other remedies which may be available to it, repair, replace, rebuild, redecorate, or paint any part(s) of such PREMISES included in said notice, with the cost thereof, plus fifteen percent (15%) for administrative overhead, to be paid by OPERATOR to CITY on demand.

I. Property Damage and Theft Reporting: OPERATOR shall notify the CITY in writing of any damage or destruction to the PREMISES and/or CITY-owned property within 48 hours of OPERATOR'S discovery thereof, or sooner if practicable. Notice by email under this provision shall be sufficient.

J. Damage or Destruction to Premises:

1. Partial Damage: If all or a portion of the PREMISES are partially damaged by fire, explosion, flooding inundation, floods, the elements, public enemy, or other casualty, but not rendered uninhabitable, the same will be repaired with due diligence by CITY at its own cost and expense, subject to the limitations as hereinafter provided. If the damage is caused by the negligent acts or omissions of OPERATOR, its agents, officers, or employees, OPERATOR shall be responsible for reimbursing CITY for the cost and expense incurred in making the repairs.

If the damages as described above in "Partial Damage" are so extensive as to render the PREMISES or a portion thereof uninhabitable or unusable for its primary purpose, but are capable of being repaired within a reasonable time not to exceed sixty (60) days, the same shall be repaired with due diligence by CITY at its own cost and expense, subject to the following limitations: The damage must be a covered claim under the City's insurance and the damage must not be from a Federal, State or locally declared disaster. If the damage is caused by the negligent acts or omissions of OPERATOR, its agents, officers, or employees, OPERATOR shall be responsible for the cost and expenses incurred in making the repairs and shall be responsible for ensuring that CITY continues to receive the PROFIT PAYMENTS at the same level based upon the average level of payment for the prior 12 months.

2. Complete Destruction: In the event all or a substantial portion of the PREMISES are completely destroyed by fire, explosion, the elements, public enemy, or other casualty, or are so damaged that they are uninhabitable or unusable for its primary purpose and cannot be replaced except after more than sixty (60) days, CITY shall be under no obligation to repair, replace or reconstruct the



PREMISES. This provision only applies to Complete Destruction or destruction of a substantial portion of the PREMISES. If the damage or destruction to the PREMISES has not been repaired or reconstructed within 4 months, OPERATOR may terminate this AGREEMENT in its entirety as of the date of the damage or destruction. Notwithstanding the foregoing, if the PREMISES, or a substantial portion thereof, are completely destroyed as a result of the negligent acts or omissions of OPERATOR, its agents, officers, or employees, OPERATOR shall pay to CITY the PROFIT PAYMENTS for one year or however long the facility is unavailable, whichever is less at the same level based upon the average level of payment for the prior 12 months. CITY may, in its discretion, require OPERATOR to repair and reconstruct the same within twelve (12) months of the destruction and OPERATOR shall be responsible for reimbursing CITY for the cost and expenses incurred in making such repairs. OPERATOR shall continue paying CITY the PROFIT PAYMENTS at the same level based upon the average level of payment for the prior 12 months monthly during the rebuilding of the facility.

3. Limits of CITY'S Obligation Defined: In the application of the foregoing provisions, CITY may, but shall not be obligated to, repair or reconstruct the PREMISES. If CITY chooses to do so, CITY'S obligation shall also be limited to repair or reconstruction of the PREMISES to the same extent and of equal quality as received by OPERATOR at the commencement of its operations.

#### **SECTION 10. INFRASTRUCTURE IMPROVEMENT PROGRAM**

A. Infrastructure Improvements: OPERATOR shall improve the OSC by adding in ground irrigation and IMPROVEMENTS totaling not less than \$400,000 in cost. OPERATOR shall submit to CITY bills, invoices and other documentation to show the actual cost of IMPROVEMENTS paid for by OPERATOR. The CITY and OPERATOR shall negotiate in good faith to develop and agree by June 30, 2019, upon a 5-year infrastructure improvement program for the PREMISES and OSC. The program shall set forth the needed infrastructure IMPROVEMENTS to be made within the 5-year program and the responsibilities of the OPERATOR to fund and complete this program.

1. Any improvements or alterations to the FACILITY must receive prior written approval from DIRECTOR.
2. CITY shall fund and install the maintenance projects listed in Exhibit "F" attached hereto and incorporated herein within the first year of the term of the AGREEMENT. This time period may be extended upon written agreement of the PARTIES.
3. CITY shall fence off overflow parking area 2 as shown in the fence plan attached hereto and incorporated herein by this reference as Exhibit "K".
4. CITY shall prepare an inventory of all capital equipment, fixtures, and structures on the PREMISES to be attached hereto and incorporated herein as Exhibit "G". OPERATOR shall have sole use and control over same during the term of this AGREEMENT.

## SECTION 11. LIABILITY

### A. Indemnification:

1. Except for the active negligence or willful misconduct of CITY, OPERATOR undertakes and agrees to defend, indemnify, and hold harmless CITY and its officers, agents, and employees from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, for death or injury to any person, including OPERATOR'S employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of, or incident to, the performance of this AGREEMENT on the part of OPERATOR, its officers, agents, employees, or sub-contractor of any tier.
2. Except for the active negligence or willful misconduct of CITY, The OPERATOR, in consideration of the granting of this AGREEMENT, agrees to hold the CITY harmless for any and all claims or rights of action for damages which may or might arise or accrue to the OPERATOR or, its officers, agents, servants, employees, or others who may be at the FACILITY as part of an OSC event or for any other reason by reason of injury to the property, or the persons of any of them resulting from the entry upon or the use of the PREMISES, by the CITY at any time, for any purpose necessary or convenient in connection with the FACILITY.
3. No member, official or employee of CITY shall be personally liable to OPERATOR, or any successor in interest, in the event of any default or breach by CITY or for any amount which may become due to OPERATOR, or on any obligations under the terms of this Agreement. OPERATOR hereby waives and releases any claim it may have against the members, officials, or employees of CITY with respect to any Default or breach by CITY or for any amount which may become due to OPERATOR under the terms of this Agreement.

B. Insurance Required: OPERATOR shall, at its own cost and expense, purchase and maintain throughout the term of this AGREEMENT the insurance listed in Exhibit "H":

## SECTION 12. PROHIBITED ACTS

OPERATOR shall not:

- A. Rent, sell, lease, or offer any space for storing of any articles whatsoever within or on the PREMISES other than as specified herein, without the prior written approval of DIRECTOR;
- B. Do or permit to be done any act or thing upon the FACILITY which will invalidate, suspend or increase the cost of any insurance policy required under the AGREEMENT, or carried by CITY, covering the PREMISES;
- C. Use, create, store, or allow any hazardous materials as defined in Title 26, Section 13-1160.3(d) of the California Code of Regulations, or those which meet the criteria of the above Code, as well as any other substance which poses a hazard to health and environment. No products containing



glyphosate may be used on the PREMISES. Nothing contained herein shall preclude OPERATOR from bringing, keeping, or using on or about the PREMISES, materials, supplies, equipment, and machinery as are appropriate or customary in carrying on its business, except that all hazardous materials must be stored and used in compliance with all city, state and federal rules, regulations, ordinances, and laws; or

D. Use the PREMISES in any manner that will constitute waste.

### **SECTION 13. PERFORMANCE, DEPOSIT, AND ASSURANCES**

A. Performance Deposit: OPERATOR shall pay to the CITY Five Thousand Dollars (\$5,000) to guarantee payment of fees and as a damage deposit to be used in accordance with the default provisions of this AGREEMENT. This deposit shall be returned to OPERATOR after the expiration or earlier termination of the AGREEMENT and any exit audit(s) performed in conjunction with the AGREEMENT. The CITY reserves the right to deduct from the deposit, any amounts up to and including the full amount of the deposit owed to the CITY by OPERATOR as shown by any exit audit(s) performed by CITY, or as compensation to CITY for failure to adhere to the terms and conditions of the AGREEMENT.

B. Financial Assurances: OPERATOR represents to the CITY that it has sufficient capital, credit, and investment available to it for the purposes of meeting its obligations set forth in this AGREEMENT. In order to demonstrate the OPERATOR'S financial capacity to perform under this AGREEMENT, OPERATOR shall provide to the CITY evidence of its source of capital and operational funding upon the CITY'S request.

### **SECTION 14. INDEPENDENT CONTRACTORS/CONSULTANTS**

The OPERATOR is acting as an independent contractor and not as an agent or employee of the CITY. The OPERATOR shall not represent or otherwise hold itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of the CITY.

### **SECTION 15. PERMITS, TAXES, AND LICENSES**

A. Permits: OPERATOR shall obtain and maintain at its sole expense any approvals, permits, or licenses that may be required in connection with the operation of the OSC including, but not limited to, tax permits, business licenses, health permits, building permits, police and fire permits, etc.

B. Taxes: OPERATOR shall pay all taxes of whatever character that may be levied or charged upon the rights of OPERATOR to use the PREMISES, or upon OPERATOR'S improvements, fixtures, equipment, or other property thereon or upon OPERATOR'S operations hereunder. In addition, by executing the AGREEMENT and accepting the benefits thereof, a property interest may be created known as "Possessory Interest" and such property interest may be subject to property taxation. OPERATOR, as the party to whom the Possessory Interest is vested, may be

liable for the payment of the property taxes levied by the state and county upon such interest. If OPERATOR becomes subject to any tax including, but not limited to a Possessory Interest Tax due to its entry into this Agreement, OPERATOR shall be solely liable for the payment of these taxes.

C. Business License: During the entire term of the AGREEMENT, OPERATOR must hold a current Morgan Hill Business License as required by the CODE Section 5.04.110 and pay applicable fees and taxes pursuant to Chapter 5.04 of the CODE.

D. City's Increase in Taxes Due: If OPERATOR'S operation of the OSC results in any additional property, income, or other taxes to CITY, those obligations shall be OPERATOR'S.

## **SECTION 16. ASSIGNMENT, SUBLEASE, BANKRUPTCY**

Prohibition of Sublease: OPERATOR shall not under-let or sub-let the subject PREMISES or any part thereof or allow the same to be used or occupied by any other person or for other use than that herein specified, nor assign the AGREEMENT nor transfer, assign or in any manner convey any of the rights or privileges herein granted without the prior written consent of CITY. Neither the AGREEMENT nor the rights herein granted shall be assignable or transferable by any process or proceedings in any court, or by attachment, execution, proceeding in insolvency or bankruptcy either voluntary or involuntary, or receivership proceedings. Any attempted assignment, mortgaging, hypothecation, or encumbering of the rights and obligations under this AGREEMENT or other violation of the provisions of this Section shall be void and shall confer no right, title or interest in or to the AGREEMENT or right of use of the whole or any portion of the FACILITY upon any such purported assignee, mortgagee, encumbrancer, pledgee or other lien holder, successor, or purchaser. CITY is contracting with OPERATOR due to the professional, voluntary and business experience of the OPERATOR. These are individual characteristics of the OPERATOR and organizations involved. These characteristics require that this AGREEMENT, or any portion of it, cannot be assigned to another entity without the prior written approval of CITY, which CITY may withhold in its sole discretion.

## **SECTION 17. BUSINESS RECORDS**

A. Record Retention: During the term of the AGREEMENT and for 3 years thereafter, OPERATOR shall maintain all of its books, ledgers, journals, and accounts in which are kept all entries reflecting the GROSS RECEIPTS received or billed by it, and expenses recorded from the business transacted pursuant to the AGREEMENT. These books, ledgers, journals, accounts, and records shall be available for inspection and examination by DIRECTOR, or a duly authorized representative of the CITY, during ordinary business hours at any time during the term of this AGREEMENT and for at least three (3) years thereafter.

B. Cash and Record Handling Requirements: If requested by DIRECTOR, OPERATOR shall prepare a description of its cash handling and sales recording systems and equipment to be used for all operations of the OSC and PREMISES, which shall be submitted to DIRECTOR for



approval. OPERATOR shall be required to maintain a method of accounting of all operations which shall correctly and accurately reflect the GROSS RECEIPTS and disbursements received or made by OPERATOR from the operation of the OSC and PREMISES. OPERATOR shall maintain records of all booking revenue and all other revenue received from any other operation at the PREMISES. These accounts shall be maintained as directed by CITY in order to facilitate any audit. OPERATOR shall reconcile all revenue received from bookings and all revenue received from all other operations. The method of accounting, including bank accounts, established for OSC and PREMISES shall be separate from the accounting systems used for any other business operated by OPERATOR or for recording any of the constituent non-profit organizations or the OPERATOR'S 501(c)(3) financial affairs.

C. Annual Statement of GROSS RECEIPTS and Expenses: OPERATOR shall transmit a Statement of GROSS RECEIPTS and Expenses (Profit and Loss Statement) for the operations specified in this AGREEMENT in a form acceptable to the DIRECTOR, on or before September 30th after the end of each fiscal year during the term of the AGREEMENT. The Statement must be prepared by a Certified Public Accountant (CPA) and shall not include statements of omission or non-disclosure. In addition, CITY may from time to time conduct an audit and re-audit of the books and businesses conducted by OPERATOR or retain an independent auditor to conduct the audit function and observe the operation of the business so that accuracy of the above records can be confirmed. If the report of GROSS RECEIPTS made by OPERATOR to CITY shall be found to be less than the amount of GROSS RECEIPTS disclosed by such audit and observation, OPERATOR shall pay CITY within 30 days after billing any additional gross revenue due City and disclosed by the audit. If discrepancy exceeds 2% and no reasonable explanation is given for such discrepancy, OPERATOR shall also pay the cost of the audit.

D. Termination for Failure to Meet Performance Goals: Based on the annual progress reports, OPERATOR shall demonstrate that it has met the performance goals by spending no less than \$400,000 for infrastructure IMPROVEMENTS to the OSC over the first five years of this AGREEMENT. The City Council may determine by a resolution, within ninety (90) days of the CITY'S receipt of the annual FISCAL YEAR progress report, that, based on the annually progress reports, OPERATOR has or has not met the performance goals for infrastructure spending in this AGREEMENT. Upon a determination by the City Council that the OPERATOR has not met the performance goals, the OPERATOR shall be deemed in default of this AGREEMENT and the CITY may terminate this AGREEMENT following a 30-day notice to the OPERATOR.

## **SECTION 18. REGULATIONS AND INSPECTIONS**

A. Regulations: The operations conducted by OPERATOR pursuant to the AGREEMENT shall be subject to:

1. Any applicable rules, regulations, orders, and restrictions which are now in force or which may be hereafter adopted by CITY with respect to the operation of the FACILITY;

2. Any orders, directions or conditions issued, given, or imposed by DIRECTOR with respect to the use of the roadways, driveways, curbs, sidewalks, parking areas, or public areas adjacent to the PREMISES;

3. Any applicable laws, ordinances, statutes, rules, regulations or orders, including the CODE, and of any governmental authority, federal, state or municipality, lawfully exercising authority over the OPERATOR'S operations;

4. Any applicable local, state and federal laws and regulations relative to the design and installation of facilities to accommodate disabled persons, including the Americans with Disabilities Act; and

5. OPERATOR acknowledges that the OSC is a smoke-free facility and shall remain so.

**B. Permissions:**

Any permission required by the AGREEMENT shall be secured in writing by OPERATOR from CITY or the DIRECTOR and any errors or omissions therefrom shall not relieve OPERATOR of its obligations to faithfully perform the conditions. OPERATOR shall immediately comply with any written request or order submitted to it by CITY or DIRECTOR provided the request or order is consistent with the terms of this AGREEMENT.

**C. Right of Inspection:**

CITY and the DIRECTOR, their authorized representatives, agents and employees shall have the right to enter upon the PREMISES at any and all reasonable times for the purpose of inspection, evaluation, and observation of OPERATOR'S operation.

1. CITY shall provide a written inspection report to OPERATOR no more than monthly. OPERATOR shall repair any item in the inspection report needing repair in an expeditious manner. If the corrections identified are safety related or are necessary to preserve the long term value of the PREMISES and OPERATOR fails to repair in an expeditious manner, then CITY or its contractor may make the repair and bill OPERATOR for the cost of the repair.

**SECTION 19. TERMINATION**

**A. Termination By CITY:**

CITY may not terminate this Agreement without cause within the first five years of the Agreement. CITY may terminate without cause starting at the end of the fifth year of the Agreement or thereafter without cause, following a one year written notice of termination.

For any event of default under this Agreement, with the exception of those listed below, CITY may, by 30-day written notice, terminate the AGREEMENT in its entirety and all rights ensuing therefrom as provided by applicable law. However, no such notice, default or event of default shall



occur until OPERATOR is provided with written notice of the event of default and fails to cure within ten (10) days after the date of the written notice from CITY. If the default cannot reasonably be cured within ten (10) days or fulfillment of OPERATOR'S obligation requires activities over a period of time, OPERATOR shall timely commence performance and such performance shall be diligently pursued without interruption.

The following listed events of default shall include the written notice and time period to cure (if any) described within each event of default:

1. OPERATOR fails to pay a PROFIT PAYMENT, or any other payment obligation due under this AGREEMENT and OPERATOR fails to pay within twenty-one (21) days after the date of a written notice of default from the CITY;
2. OPERATOR fails to keep, perform, and observe any promise, covenant, and condition set forth in the AGREEMENT and OPERATOR fails to perform following thirty (30) days written notice of the event of default and then OPERATOR fails to cure within ten (10) days after the date of the written notice from CITY. If the default cannot reasonably be cured within ten (10) days or fulfillment of OPERATOR'S obligation requires activities over a period of time, OPERATOR shall timely commence performance and such performance shall be diligently pursued without interruption.;
3. OPERATOR'S interest in the AGREEMENT is assigned, transferred, passed to or devolved upon, by operation of law or otherwise, any other person, firm or corporation without the written consent of DIRECTOR;
4. OPERATOR becomes, without the prior written approval of DIRECTOR, a successor or merged corporation in a merger, a constituent corporation in a consolidation or a corporation in dissolution;
5. The levy of any attachment or execution, or the appointment of any receiver, or the execution of any other process of any court of competent jurisdiction which is not vacated, dismissed or set aside within a period of ten (10) days and which does, or as a direct consequence of such process will, interfere with OPERATOR'S use of the FACILITY or with its operations under the AGREEMENT;
6. OPERATOR becomes insolvent, or takes the benefit of any present or future insolvency statute, or makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States, or of any state law, or consents to the appointment of a receiver, trustee or liquidator of all or substantially all of its property or its property located within the PREMISES;
7. By order or decree of court, OPERATOR is adjudged bankrupt, or an order is made approving a petition filed by any of the creditors or stockholders of OPERATOR seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws, or under any law or statute of the United States, or any state thereof;

8. A petition under any part of the federal bankruptcy laws, or an action under any present or future solvency law or statute is filed against OPERATOR and is not dismissed within one hundred twenty (120) days;

9. By or pursuant to, or under authority of, any legislative act, resolution or rule, order or decree of any court, governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator takes possession or control of all or substantially all of the property of OPERATOR;

10. Cessation or deterioration of service for any period which, in the reasonable opinion of DIRECTOR, materially and adversely affects the operation or service required to be performed by OPERATOR under the AGREEMENT following thirty (30) days written notice of the event of default and then OPERATOR fails to cure within ten (10) days after the date of the written notice from CITY. If the default cannot reasonably be cured within ten (10) days or fulfillment of OPERATOR'S obligation requires activities over a period of time, OPERATOR shall timely commence performance and such performance shall be diligently pursued without interruption.

11. Any lien is filed against the PREMISES because of any act or omission of OPERATOR and the lien is not removed, enjoined or a bond for satisfaction of such lien is not posted within thirty (30) days written notice; or

12. OPERATOR voluntarily abandons, deserts, vacates, or discontinues its operation of the business herein authorized.

No acceptance by CITY of the PROFIT PAYMENT or other payments specified herein, in whole or in part, and for any period, after a default of any of the terms, covenants and conditions to be performed, kept or observed by OPERATOR, other than the default in the payment thereof, shall be deemed a waiver of any right on the part of CITY including the right to terminate the AGREEMENT on account of such default.

**B. Payment to OPERATOR following Termination by CITY.**

If CITY terminates this AGREEMENT without cause, OPERATOR shall be entitled to a repayment of the proportionate share of its infrastructure improvement costs not to exceed \$400,000. If CITY terminates this AGREEMENT without cause at the end of the in the six year of the Agreement, OPERATOR is entitled to 40%% of its actual infrastructure investment returned. For each subsequent year of the term, the percentage repaid will be reduced by 10%. For example, in the tenth year of this AGREEMENT, OPERATOR shall be entitled to a repayment of 10% of its infrastructure improvement costs and upon the expiration of the first ten years of this AGREEMENT, OPERATOR would not be entitled to any repayment for its infrastructure improvement costs.

**C. CITY'S Right of Reentry:**

CITY shall, as an additional remedy, upon an event of default as provided above, have the right to reenter the PREMISES and every part thereof on the effective date of termination without further notice of any kind, remove any persons present and may regain and resume possession either with

or without the institution of summary or legal proceedings or otherwise. Such reentry, however, shall not in any manner affect, alter or diminish any of the obligations of OPERATOR under the AGREEMENT.

D. Additional Rights of CITY:

CITY, upon termination of the AGREEMENT, or upon reentry, regaining, or resumption of possession of the PREMISES, may occupy the PREMISES and shall have the right to permit any person, firm, or corporation to enter upon the PREMISES and use it. This occupation by others may be of only a part of the PREMISES, or the whole or a part of together with other space, and for a period of time the same as or different from the balance of the term remaining in this AGREEMENT, and on terms and conditions the same as or different from those set forth in the AGREEMENT.

E. Survival of OPERATOR'S Obligations:

In the event the AGREEMENT is terminated by CITY for cause, or in the event CITY reenters, regains, or resumes possession of the PREMISES, all of the obligations of OPERATOR shall survive and shall remain in full force and effect for the full term of the AGREEMENT. Subject to CITY'S obligation to mitigate damages, the amount of the PROFIT PAYMENT shall become due and payable to CITY to the same extent, at the same time and in the same manner as if no termination, reentry, regaining or resumption of possession had taken place, for a period not to exceed one year. CITY may maintain separate actions to recover any monies then due, or at its option and at any time, may sue to recover the full deficiency. The amount of damages for the period of time subsequent to termination, reentry, regaining or resumption of possession, subject to an offset for any PROFIT PAYMENT or any other payment received by CITY from a succeeding operator, shall be the amount of the estimated amount of reduction in the PROFIT PAYMENT which would have been due had OPERATOR continued to operate the FACILITY properly for the balance of the term of the AGREEMENT. The damages specified above shall not affect or be construed to affect CITY'S right to damages in the event of termination, reentry, regaining, or resumption of possession where OPERATOR has not received any actual GROSS RECEIPTS under the AGREEMENT.

F. Termination By OPERATOR:

The AGREEMENT may be terminated by OPERATOR, by a 30-day written notice, upon the happening of one or more of the following events of default:

1. The complete destruction of all or a substantial portion of the PREMISES from a cause other than the negligence or omission of OPERATOR, its agents, officers, or employees, and the failure of CITY to repair or reconstruct said PREMISES;
2. Any exercise of authority under the AGREEMENT which so interferes with OPERATOR'S use and enjoyment of the PREMISES as to constitute a termination of the AGREEMENT by operation of law in accordance with the laws of the State of California; or

3. The default by CITY in the performance of any material covenant or agreement herein required to be performed by CITY and the failure of CITY to remedy such default for a period of thirty (30) days after receipt from OPERATOR of written notice to do so and then CITY fails to cure within ten (10) days after the date of the written notice from OPERATOR. If the default cannot reasonably be cured within ten (10) days or fulfillment of CITY'S obligation requires activities over a period of time, CITY shall timely commence performance and such performance shall be diligently pursued without interruption..

4. If OPERATOR terminates for cause, OPERATOR is entitled to have its investment returned to it at 100% for the first year, declining to 10% in the 10<sup>th</sup> year.

## **SECTION 20. SURRENDER OF POSSESSION**

OPERATOR agrees to yield and deliver possession of the PREMISES to CITY on the date of the expiration or earlier termination of the AGREEMENT promptly, peaceably, quietly, and in as good order and condition as the same now are or may be hereafter improved by OPERATOR or CITY, normal use and wear and tear thereof excepted. No agreement of surrender or to accept a surrender shall be valid unless and until the same is in writing and signed by the duly authorized representatives of CITY and OPERATOR. Neither the doing nor omission of any act or thing by any of the officers, agents or employees of CITY shall be deemed an acceptance of a surrender of the PREMISES utilized by OPERATOR under the AGREEMENT.

OPERATOR shall have the right to remove its equipment, supplies, furnishings, inventories, removable fixtures and personal property from the PREMISES within thirty (30) days of the expiration or earlier termination of the AGREEMENT. If OPERATOR fails to remove the property within that thirty (30) days, the property shall be considered abandoned and CITY may dispose of the property as it sees fit.

## **SECTION 21. WAIVER**

A waiver of a default of any part, term, or provision of the AGREEMENT shall not be construed as a waiver of any succeeding default or as a waiver of the part, term, or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

## **SECTION 22. FORCE MAJEURE**

Neither party hereto shall be liable to the other for any failure, delay, or interruption in the performance of any of the terms, covenants or conditions of the AGREEMENT due to causes beyond the control of that party including, without limitation, strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, landslides, earthquakes, acts of the public enemy, acts of superior governmental authority, floods, riots, rebellion, sabotage.



### **SECTION 23. REMEDIES ARE NON-EXCLUSIVE AND MEDIATION REQUIREMENT**

No right, power, remedy, or privilege of CITY shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of these rights, powers, remedies, or privileges shall be deemed cumulative and additional and not in lieu or exclusive of each other or of any other remedy available to CITY at law or in equity. No litigation may be filed concerning this Agreement unless both parties have participated in non-binding mediation prior to the filing of a lawsuit.

### **SECTION 24. LAW OF CALIFORNIA APPLIES**

The laws of the State of California shall govern the performance and enforcement of this AGREEMENT.

### **SECTION 25. VENUE**

Venue of any action brought in connection with the AGREEMENT shall lie in Santa Clara County Superior Court.

### **SECTION 26. SEVERABILITY**

If any term, provision, condition or covenant of this Agreement or its application to any Party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

### **SECTION 27. ATTORNEY'S FEES**

Should any legal action be brought by a party for breach of this Agreement or to enforce any provision herein, the prevailing party of the action shall be entitled to reasonable attorneys' fees, court costs, and other such costs as may be fixed by the court. Reasonable attorneys' fees of the City Attorney's Office if private counsel is not used, shall be based on comparable fees of private attorneys practicing in Santa Clara County.

### **SECTION 28. NOTICES**

A. To CITY:

Unless otherwise stated in the AGREEMENT, written notices to CITY shall be addressed to the Department of Community Services, Attn: Department Director, 17555 Peak Avenue Morgan Hill, CA 95037.

All notices may either be delivered personally or may be deposited in the United States mail, properly addressed with postage fully prepaid for delivery by registered or certified mail. Service in such manner by registered or certified mail shall be effective upon receipt. This address may be used for service of process.

CITY shall provide OPERATOR with written notice of any address change within thirty (30) days of the occurrence of said address change.

**B. To OPERATOR:**

All notices may either be delivered personally to the OPERATOR or to any officer or responsible employee of OPERATOR or may be deposited in the United States mail, properly addressed as aforesaid with postage fully prepaid for delivery by registered or certified mail. Service in such manner by registered or certified mail shall be effective upon receipt. This address may be used for service of process.

Written notices to OPERATOR shall be addressed to OPERATOR as follows:

MHOSC, LLC

c/o

Rodney Robinson

12238 Via Arline Road

Los Altos Hills, CA 95330

OPERATOR shall provide CITY with written notice of any address change within thirty (30) days of the occurrence of said address change.

## **SECTION 29. INTERPRETATION**

OPERATOR and CITY agree that the AGREEMENT shall be deemed to have been jointly drafted and shall be construed according to its fair meaning and not strictly for or against either CITY or OPERATOR. The section headings are for the convenience of CITY and OPERATOR, and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of the AGREEMENT. If any provision of the AGREEMENT is determined to be void by any court of competent jurisdiction, then this determination shall not affect any other provision of the AGREEMENT, and all such other provisions shall remain in full force and effect; and it is the intention of the PARTIES that if any provision of the AGREEMENT is capable of two

constructions, one of which render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid. The use of any gender shall include all genders and the use of any number shall be construed as the singular or the plural, all as the context may require.

### **SECTION 30. AGREEMENT CONTAINS ENTIRE AGREEMENT**

The provisions of the AGREEMENT contain the entire agreement between the PARTIES and said AGREEMENT may not be changed or modified in any manner except by formal, written amendment fully executed by both CITY and OPERATOR.

### **SECTION 31. TIME OF THE ESSENCE**

Time is of the essence for all provisions of the AGREEMENT

### **SECTION 32. INCORPORATION OF DOCUMENTS**

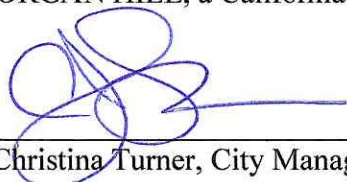
This AGREEMENT and incorporated documents represent the entire integrated agreement of the PARTIES and supersedes all prior written or oral representations, discussions, and agreements.

IN WITNESS WHEREOF, THE CITY OF MORGAN HILL has caused this AGREEMENT to be executed on its behalf by its duly authorized representative and OPERATOR has executed the as of the date first written above.

**CITY:**

CITY OF MORGAN HILL, a California municipal corporation

By:

  
\_\_\_\_\_  
Christina Turner, City Manager

APPROVED AS TO FORM:

By:

  
\_\_\_\_\_  
Donald A. Larkin, City Attorney

ATTEST:



By:

Irma Torrez, City Clerk

**OPERATOR:**

**MHOSC, LLC**

a California Limited Liability Company and 501(c)(3)

By: 

Name: Allison Bass

Its: Manager

By: 

Name: Lela Huenergardt

Its: Manager

By: 

Name: Robert K. Joyce

Its: manager

**Exhibits:**

"A": Map of PREMISES

"B": Existing Rates

"C": Current Organization List

"D": Minimum Size of OSC (Reduced Premises)

"E": San Pedro Parking

"F": CITY Improvement Plan

"G": Capital Equipment List

"H": Insurance Requirements

"I": Profit and Loss Statement

J: Complete Parking Map

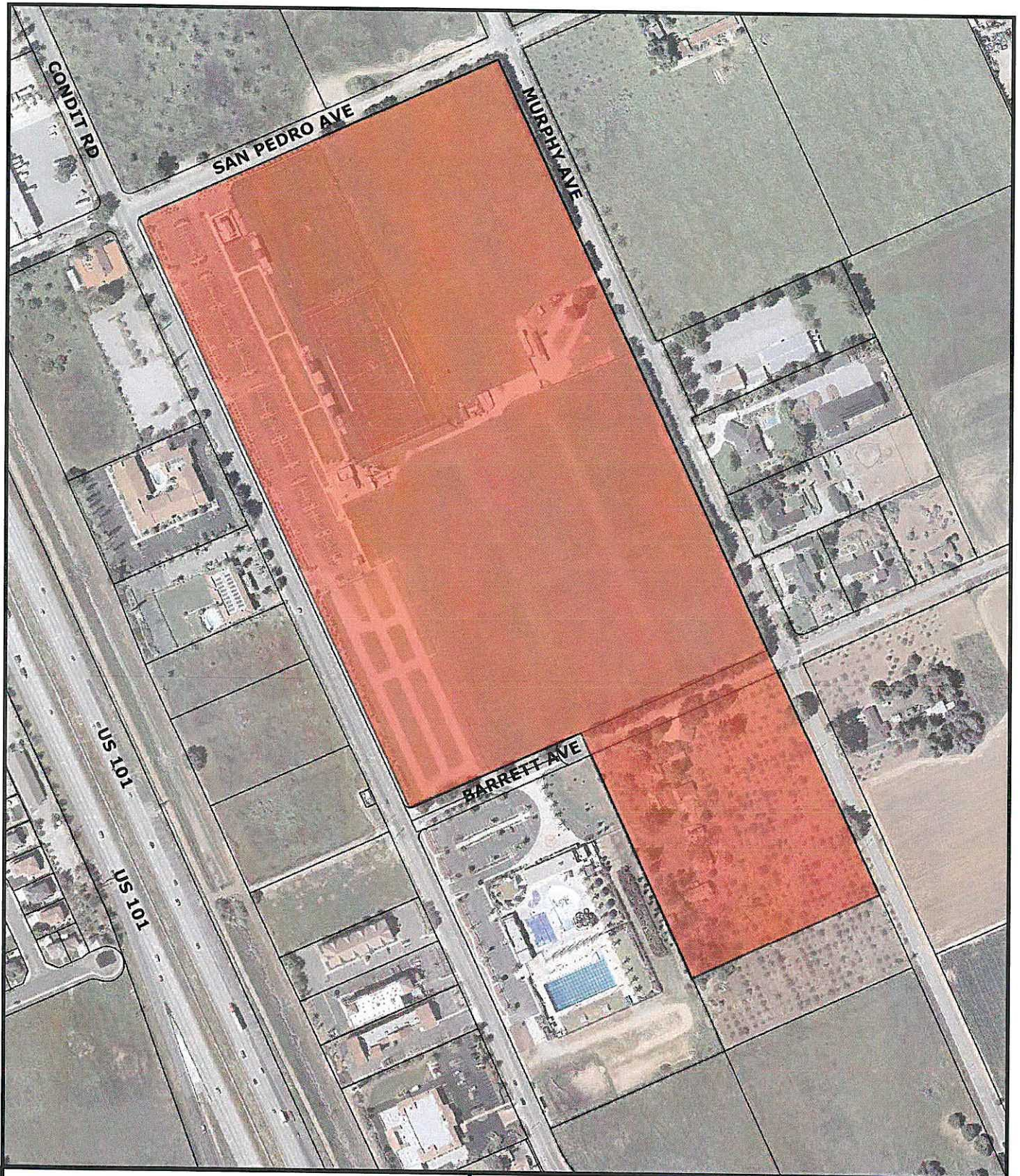
K: Fence Plan

L: Reserve Fund

M: Murphy Avenue Potential Future Expansion.

Operating and Maintenance Agreement for Outdoor Sports Center FINAL execution version 12-11-18





**EXHIBIT A-  
MAP OF PREMISES**



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# Exhibit B - Existing Rates

	MH Non Profit		MH Resident		Visitor Non Profit		Visitor	
	Turf	Grass	Turf	Grass	Turf	Grass	Turf	Grass
1-2 Fields	\$ 50	\$ 40	\$ 60	\$ 50	\$ 75	\$ 60	\$ 95	\$ 70
3-5 Fields	\$ 45	\$ 35	\$ 55	\$ 45	\$ 70	\$ 55	\$ 90	\$ 65
6-8 Fields	\$ 40	\$ 30	\$ 50	\$ 40	\$ 65	\$ 50	\$ 85	\$ 60
9-11 Fields	\$ 35	\$ 25	\$ 45	\$ 35	\$ 60	\$ 45	\$ 80	\$ 55

Rates are hourly

## Exhibit C - Current Organization List

### List of Existing Local Sports Groups and Regular Users

#### Local Users:

##### Morgan Hill Pop Warner Raiders –

- Football turf priority August through October, with option for November
- Four Saturdays starting in late August with option for fifth

##### Morgan Hill Youth Sports Alliance, Inc.

- Poppy Jasper Cup Entire Facility Last weekend in March
- 49ers Play 60 Camp Turf Fields Saturday before Father's Day
- So. County Outlaws Football Turf August-May as needed, if avail.
- CSMP Football Turf 3-6pm, Tues/Thurs. as avail.

##### South Valley Youth Rugby

- Football Turf November-April, Tues./Thurs.

##### Independence Day Celebration, Inc.

- Fireworks on the Green
- Set up South Fields July 3rd , 10am to 3pm
- Event Entire Facility July 4th, 6am to Midnight
- Clean up Grass Fields July 5th, 7am to 5pm

##### Sobrato High School

- Turf fields, Nov-Feb, 3-6pm as needed

##### Oakwood School

- Turf fields, Nov-Feb, 3-6pm, weekdays as needed

##### Britton Middle School

- Turf fields, Nov-Feb, 3-6pm, weekdays as needed

##### Charter School of Morgan Hill

- Turf fields, Jan-Mar., 3-6pm, weekdays as needed

##### Jackson Academy Turf fields

- Dec-Mar, 3-6pm, weekdays as needed

##### SBAL

- Turf Field Sept-Oct., 3-5pm, weekdays as needed

##### City of Morgan Hill

- Youth Triathlon, Parking Areas prior to 10am one Saturday per year



## Regional Users:

### Silicon Valley Cricket Group

- League Play South grass fields, Sat.-Sun, March- Sept.
- Tournaments South grass fields, last 2 weeks in June, 1st week in July

### Tenacity Sports

- Western Winners Turf fields, Fields A and B June mid-month, four days
- Bonanza Entire facility - First weekend in November

### Surf San Jose

- Entire facility – First weekend in March

### CYSA Cal North

- National C Course Turf fields – July 30-Aug. 9, 2nd Dec. weekend Fri.-Sun.
- Jr. Cup South grass fields, 2nd Dec. weekend Sat.-Sun.
- CRL (Back in 2018) Entire facility – middle two weekends in March

### All West Lacrosse

- Entire facility – Third weekend in July

### CVYSL Magic Cup

- Entire facility – Third weekend in August

### Alianza de Futbol

- Entire facility – Varies July-September

### Univision

- South grass fields, One Saturday in July-September (Date varies)

### International Rugby 7s

- South grass fields – Last week of Oct./first week of Nov.





CITY OF MORGAN HILL

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**EXHIBIT D-  
MINIMUM SIZE OF OSC  
REDUCED PREMISES**





## Outdoor Sports Center





#### Exhibit F – City Improvement Plan

- Replace five 20' x 30' shade canopies covering fields #1 bleachers and three 18'x 23' shade canopies covering field #2 bleachers including fabric, attachments, and installation
- Power wash two sail canopies over picnic area, de-rust structure, and repaint structure where rusted.
- Remove building in current maintenance yard.
- Repair and repaint interior walls, ceilings, doors and trim as required on Main Building. Repair or replace any damaged fixtures, and/or hardware as may be required in both restrooms, both family restrooms, office, and kitchen/concession building.
- Service the two existing scoreboards on field #1 and #2 and ensure they are operational
- Ensure the two drinking fountains at the turf fields are operational.
- Ensure gates for the parking lot and both synthetic turf fields are operational.

Exhibit G - Outdoor Sports Center Equipment List				
Item		Qty		Notes
Synthetic Turf Fields		2		
- Field Light Poles with 7 Lights Each		8		
- Large Bleacher for 600 with Shade Structure		1		
- Small Bleachers for 200 with Shade Structure		1		
- Drinking Fountains		2		
- Electronic Scoreboards with Wireless Controllers		2		
- Players Team Benches		8		
- PA System w/ 4 Speakers and Control Box, Amp, and Mic		1		
- Lacrosse Goals		4		
- Soccer Goals Type 1		4		
- Field Hockey Goals		2		
- Metal Recycle and Trash Can Covers with Plastic Cans		6		
- Concrete Trash Receptacles		25		
- Field End Ball Stop Nets (Poor Condition)		3		
- Football Uprights with Pole Pads		2		
Parking Lot (325 Spaces) with Landscaping/Parking Lot Lights/Trash receptacles		1		
OSC Building w Kitchen, Meeting Room, Restrooms, Hallways, Storage Rooms		1		
- Electrical Control Panels with Lighting Controller		1		
- Fire Alarm System		1		
- Burglar Alarm System		1		
- Meeting Room Chairs		17		
- Meeting Room Table		1		
- Manitowoc Ice Machine		1		
- Bunn Double Coffee Machine		1		
- Double Door True Freezer		1		
- Double Door True Refrigerator		1		
- Double Door True Glass Front Refrigerator		1		
- Conform Portable Sink Unit		1		
- Crown Variety Commercial BBQ		1		
- Fire Extinguisher		3		

- Sink, Counters, Shelves attached to Kitchen	1		
Grass Warm Up Field Areas	3		
BBQ Patio Area	1		
- Picnic Tables	6		
- Fenced BBQ Enclosure with Gas Valve	1		
- Picnic Tables	6		
- Outdoor Tables	2		
- 4 Door Free Standing Display Case	1		
Trash Enclosure	1		
Acres of Grass Fields	23		
Metal Bleachers on Grass Area	2		
Fenced Maintenance Enclosure	1		
- Shade Covering	1		
- Large Tough Sheds	2		
- Small Tough Shed	1		
- Well Pump	1		
- Booster Pump	1		
- Facility Electrical Controls/Breakers/Field Light Controller/etc	1		



## **EXHIBIT H: Required Insurance**

OPERATOR shall procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of OPERATOR, including its subcontractors, for liability arising out of or relating to OPERATOR's use or occupancy of the OSC or the conduct of its operations under this AGREEMENT, and must remain in full force and effect at all times during the period covered by this Agreement, including any extensions of time as may be granted. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. Any deductibles or self-insured retentions must be declared to and approved by CITY. OPERATOR further understands that CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to OPERATOR, at any time as deemed necessary to protect the interests of CITY.

(a) Policies and Limits. The following insurance policies and limits are required for this Agreement:

(1) Commercial General Liability Insurance ("CGL"): OPERATOR shall maintain CGL against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) two million dollars (\$2,000,000.00) combined single limit each occurrence and either a general aggregate limit of four million dollars (\$4,000,000.00) or a general aggregate limit of two million dollars (\$2,000,000.00) as applied on a "per location" basis, or (ii) the maximum amount of such insurance available to OPERATOR under OPERATOR's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

(2) Workers' Compensation Insurance and Employer's Liability: OPERATOR shall maintain Workers Compensation coverage, as required by law. The policy must comply with the requirements of the California Workers' Compensation Insurance and Safety Act and provide protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to OPERATOR under OPERATOR's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If OPERATOR is self-insured, OPERATOR must provide its Certificate of Permission to Self-Insure, duly authorized by the State of California Department of Industrial Relations.

(3) Automobile Liability: OPERATOR shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if OPERATOR does not own automobiles, then OPERATOR shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) combined single limit, or (ii) the maximum amount of such

insurance available to OPERATOR under OPERATOR's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

(b) Required Endorsements. OPERATOR shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below.

(1) ALL Policies:

"Waiver of Subrogation" - Each required policy must include an endorsement providing that the carrier agrees to waive any right of subrogation it may have against the CITY of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

(2) ALL Policies except Workers Compensation:

a. "Additionally Insured" - The CITY of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds.

(3) General Liability:

a. "Primary and Non-Contributing" - Insurance shall be primary non-contributing;

b. "Separation of Insureds" - The inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(c) Subcontractors. OPERATOR must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Exhibit H as appropriate based on each subcontractor's scope of work, with respect to the management or operations of the OSC, including all required endorsements.

(d) Qualification of Insurers. All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A" or better and a financial size rating of "VIII" or better.

(e) Certificates. OPERATOR shall furnish CITY with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the OPERATOR's agreement with the CITY shall be reduced, cancelled, allowed to expire, or materially changed except after thirty (30) days' notice by the insurer to CITY, unless due to non-payment of premiums, in which case ten (10) days written notice must be made to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

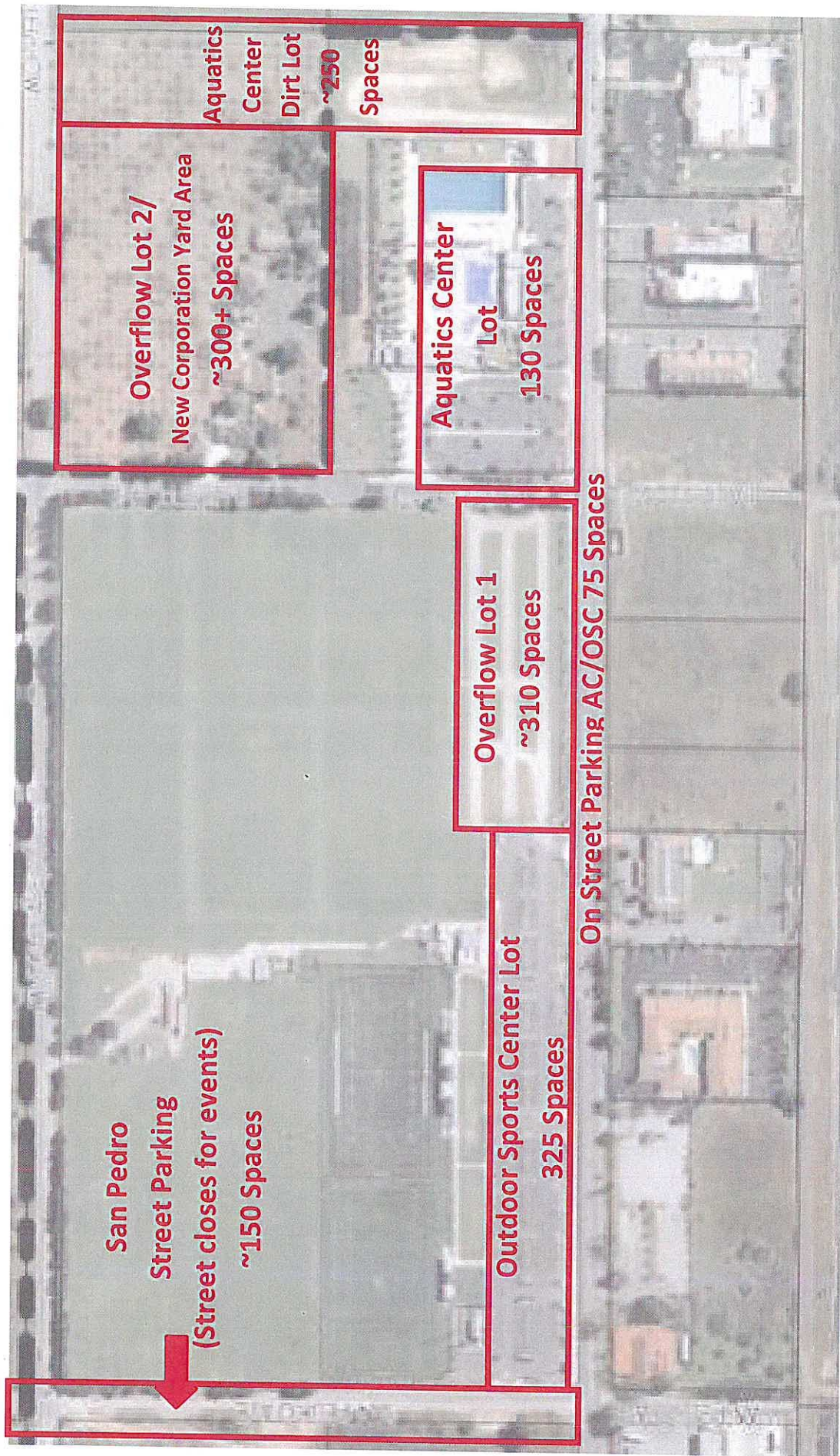
CITY of Morgan Hill  
Attn: Risk Management  
17575 Peak Avenue  
Morgan Hill, CA 95037



**Exhibit I - Profit and Loss Statement Format**

<b>Sales</b>	
Food	
Wine	
Beer	
N/A Beverages	
Merchandise	
Catering	
<b>Total SALES</b>	
<b>Cost of Goods Sold (COGS)</b>	
Food	
Wine	
Beer	
Beverages	
Merchandise	
Catering	
<b>Total COGS</b>	
<b>Gross Profit</b>	
<b>Labor Cost</b>	
<b>Operating Costs</b>	
Rent	
Utilities	
Property Tax	
Waste Removal	
Insurance	
Equipment Repairs	
<b>Total Operating Cost</b>	
<b>Net Profit/Loss</b>	

Exhibit J – Complete Parking Map







City shall provide fencing in as indicated in red in this exhibit. Fencing shall be minimum 5' high. Fencing may be movable or include sections that are movable to provide for flexibility.



## EXHIBIT K - FENCE PLAN





## **Exhibit L - Reserve Fund**

### **Outdoor Sports Center Replacement Plan**

#### **Projects Eligible for use of Reserve Fund**

Parking Lot Seal and Striping

Outdoor Turf Fields

Outdoor Turf Underlayment/Drainage System

Well Pump

Building HVAC - Replacement not repair

Building Flooring

Building Roofing

Netting Goals and Goal Posts (Turf Fields Only)

Storage Sheds

Shade Canopies

AV Equipment

Fencing



# Exhibit M - Murphy Ave Future Expansion



EXHIBIT M - MURPHY AVENUE  
FUTURE EXPANSION



**Non-profit Status Side Letter  
Agreement**

This Agreement is a Side Letter to the Agreement for the Operation and Maintenance of the Outdoor Sports Center (Agreement) between the City of Morgan Hill and MHOSC, LLC. The purpose of this side letter is to clarify the non-profit status requirement for the MHOSC, LLC within the Agreement.

**RECITALS**

Whereas the Agreement indicates that the MHOSC is a 501(c)3 LLC.

Whereas the MHOSC has applied for 501(c)3 exempt status and is awaiting response from the Internal Revenue Service.

Now, Therefore, the parties agree as follows:

1. MHOSC agrees that it must complete and receive its 501(c)3 exempt status by December 31, 2019.
2. The City agrees that MHOSC shall not be considered in default due specifically to its 501(c)3 status through December 31, 2019.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first set forth above.


MHOSC:

By   
Allison Bass, Manager

By   
Lela Huenergardt, Manager

By   
Robert K. Joyce, Manager

City of Morgan Hill:

By   
Christina Turner, City Manager

Attest:

By \_\_\_\_\_  
Michelle Wilson, Deputy City Clerk

Approved to Form:

By   
 Donald Larkin, City Attorney



**APPROVED**

By Shadia Hrichi at 8:59 am, Jun 25, 2019

DATE (MM/DD/YYYY)

6/25/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Pacific Diversified Insurance Services CA Lic # 0K07568 15005 Concord Circle, Suite 110 Morgan Hill CA 95037	<b>CONTACT NAME:</b> Veronica Kelly	
	<b>PHONE (A/C, No, Ext):</b> 408-842-2131	<b>FAX (A/C, No):</b> 408-842-0867
<b>INSURED</b> MHOSC, LLC 6690 Stephan Ct. Gilroy CA 95020	<b>E-MAIL ADDRESS:</b> vkelly@pdins.com	
	<b>INSURER(S) AFFORDING COVERAGE</b>	
	<b>INSURER A:</b> Burlington Insurance Company	
	<b>INSURER B:</b> Ace Fire Underwriters	
	<b>INSURER C:</b> State Compensation Ins Fund	
	<b>INSURER D:</b>	
<b>INSURER E:</b>		
<b>INSURER F:</b>		

**COVERAGES****CERTIFICATE NUMBER:** 1547520870**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	Y	Y	904B001864	5/10/2019	5/10/2020	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ Included \$
A	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			904B001864	5/10/2019	5/10/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
C	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> Y	N/A	9255918-2019	6/18/2019	6/18/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Directors & Officers			NFPCAF150006002	5/10/2019	5/10/2020	D&O 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The CITY of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are included as additional insured with respect to the general liability policy. Insurance is primary and non-contributory. Waiver of subrogation wording applies to the general liability and workers compensation policies.

**CERTIFICATE HOLDER****CANCELLATION**

CITY of Morgan Hill  
Attn: Risk Management  
17575 Peak Ave  
Morgan Hill CA 95037  
USA

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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ACORD 25 (2016/03)

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THIS CERTIFICATE SUPERSEDES PREVIOUSLY ISSUED CERTIFICATE



ENDORSEMENT AGREEMENT  
WAIVER OF SUBROGATION  
BLANKET BASIS

BROKER COPY

9255918-19  
NEW  
SP

HOME OFFICE  
SAN FRANCISCO

ALL EFFECTIVE DATES ARE  
AT 12:01 AM PACIFIC  
STANDARD TIME OR THE  
TIME INDICATED AT  
PACIFIC STANDARD TIME

EFFECTIVE JUNE 18, 2019 AT 12.01 A.M.  
AND EXPIRING JUNE 18, 2020 AT 12.01 A.M.

PAGE 1 OF 1

MHOSC, LLC  
6690 STEPHAN CT  
GILROY, CA 95020

WE HAVE THE RIGHT TO RECOVER OUR PAYMENTS FROM ANYONE  
LIABLE FOR AN INJURY COVERED BY THIS POLICY. WE WILL  
NOT ENFORCE OUR RIGHT AGAINST THE PERSON OR  
ORGANIZATION NAMED IN THE SCHEDULE.

THIS AGREEMENT APPLIES ONLY TO THE EXTENT THAT YOU  
PERFORM WORK UNDER A WRITTEN CONTRACT THAT REQUIRES YOU  
TO OBTAIN THIS AGREEMENT FROM US.

THE ADDITIONAL PREMIUM FOR THIS ENDORSEMENT SHALL BE  
2.00% OF THE TOTAL POLICY PREMIUM.

SCHEDULE

<u>PERSON OR ORGANIZATION</u>	<u>JOB DESCRIPTION</u>
ANY PERSON OR ORGANIZATION FOR WHOM THE NAMED INSURED HAS AGREED BY WRITTEN CONTRACT TO FURNISH THIS WAIVER	BLANKET WAIVER OF SUBROGATION

NOTHING IN THIS ENDORSEMENT CONTAINED SHALL BE HELD TO VARY, ALTER, WAIVE  
OR EXTEND ANY OF THE TERMS, CONDITIONS, AGREEMENTS, OR LIMITATIONS OF THIS  
POLICY OTHER THAN AS STATED. NOTHING ELSEWHERE IN THIS POLICY SHALL BE  
HELD TO VARY, ALTER, WAIVE OR LIMIT THE TERMS, CONDITIONS, AGREEMENTS OR  
LIMITATIONS OF THIS ENDORSEMENT.

COUNTERSIGNED AND ISSUED AT SAN FRANCISCO: JUNE 26, 2019

  
AUTHORIZED REPRESENTATIVE

  
PRESIDENT AND CEO

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED - MANAGERS OR LESSORS OF PREMISES**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

**Designation Of Premises (Part Leased To You):**

16500 Condit Road  
Morgan Hill CA 95037

**Name Of Person(s) Or Organization(s) (Additional Insured):**

CITY of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers  
Attn: Risk Management  
17575 Peak Ave  
Morgan Hill, CA 95037

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**A. Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on behalf of the person(s) or organization(s) shown in the Schedule.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and

2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B. With respect to the insurance afforded to these additional insureds, the following is added to Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.



## WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

### SCHEDULE

**Name Of Person Or Organization:**

CITY of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers Attn: Risk Management 17575 Peak Ave Morgan Hill, CA 95037

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us of Section IV - Conditions:**

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**AMENDMENT – OTHER INSURANCE  
(PRIMARY AND NON-CONTRIBUTORY COVERAGE)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

**Schedule of Additional Insured(s):**

CITY of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers Attn: Risk Management 17575 Peak Ave Morgan Hill, CA 95037

- A. Paragraph C. of this endorsement replaces paragraph 4. **Other Insurance of Section IV-Commercial General Liability Conditions**, but only with respect to the insurance afforded to the additional insured(s) scheduled above.
  - B. Paragraph C. of this endorsement replaces paragraph 4. **Other Insurance of Section IV-Products-Completed Operations Liability Conditions**, but only with respect to the insurance afforded to the additional insured(s) scheduled above.
  - C. **Other Insurance**  
Notwithstanding other valid and collectible insurance available to the insured for a loss we cover under the applicable Coverage Part to which this endorsement is modifying, this insurance is primary and non-contributory.
- 1. Applies only when you are required by contract, agreement or permit to provide primary and non-contributory coverage for the additional insured, provided such written contract, agreement or permit is fully executed prior to an "occurrence" in which coverage is sought under this policy, and
  - 2. Does not apply to any claim, loss or liability due to the sole negligence of the additional insured.

**All other terms and conditions of this Policy remain unchanged.**

However, this endorsement: